IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6794 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

M H VAKHARIA

Appearance:

1. Special Civil Application No. 6794 of 1994

MR HASIT DAVE, AGP for Petitioner No. 1

MR RR SHAH for Respondent No. 1

MR JS PATEL for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 20/10/2004

ORAL JUDGEMENT

The petitioner, State of Gujarat, has filed this petition under Article 226 of the Constitution of India

seeking direction for implementation of the provisions of the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act and more particularly Section 21 of the said Act and for implementation of the order passed by the Tribunal on 01.01.1994. The petitioner has also prayed for direction to quash and set aside the proceedings before the learned Arbitrator, so far as it requires and permits the respondents to continue arbitration proceedings and to decide the reference pursuant to the judgment and order of the learned Civil Judge (S.D.), Ahmedabad (Rural) in Special Civil Suit No. 133 of 1987.

2. It is the case of the petitioner that Special Civil Suit No. 133 of 1987 was filed before the learned Civil Judge (S.D.), Ahmedabad (Rural) under Section 20 of the Arbitration Act for direction to file the agreement No. 2/9 of 1981-82 and also to appoint a sole arbitrator and to make an order of reference to the Arbitrator to resolve the dispute of the parties which have arisen out of the agreement and the learned 2nd Joint Civil Judge (S.D.), Ahmedabad (Rural) has passed an order allowing the suit and appointing one Mr. Vakharia, Retired Chief Engineer, as a sole Arbitrator to resolve the disputes between the parties vide judgment and order dated 05.11.1993 and directed the said Arbitrator to submit report within the period of four months from the date of commencement of the arbitration work.

3. It is also the case of the petitioner that Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992 received the assent of the President and same was published on 23.03.1992. It is also the case of the petitioner that the Government of Gujarat in exercise of the powers conferred by sub-sec. 1 and 2 of Section 3 of the Gujarat Public Works Contracts Disputes Tribunal Act, 1992 has established with effect from 01.01.1994. The Tribunal to exercise jurisdiction, powers and authority conferred on it by or under this Act vide Notification dated 10.12.1993. In view of the provisions contained in Section 21 of the Act, the Provisions of the Arbitration Act shall in so far as they are inconsistent with the provisions of this Act cease to apply to any dispute arising from a work contract and all arbitration proceedings in relation to such disputes before an arbitrator, umpire and/or court or authority shall stand transferred to the Tribunal.

4. Mr. Hasit Dave, learned A.G.P. appearing for the petitioner has submitted that in view of the above statutory provisions, the arbitration proceedings entrusted to the sole arbitrator, of which first

preliminary meeting was scheduled on 17.01.1994 pursuant to orders passed by the Tribunal vide order dated 01.01.1994 stands transferred to Tribunal and accordingly, the sole Arbitrator cannot proceed further with the said reference. He has further submitted that in view of the order of the Tribunal and in view of the provisions contained in Section 21 of the Act, the petitioner made request to the respondent No.1 for transferring the proceedings and till the said proceedings were transferred, further proceedings before him should be stayed. However, the said request was rejected by the respondent No.1 and hearings were fixed subsequently on 03.05.1994 and 04.05.1994. He has further submitted that the petitioner has moved another application on 03.05.1994 again reiterating the request made earlier. The said request was also rejected and hearing was fixed on 10.05.1994. The petitioner has also moved an application to the Tribunal. However, on account of want of jurisdiction, analogous to O.39 of C.P.C. for interim direction, the petitioner was left with no other alternative but to approach this Court.

5. This petition was admitted on 25.07.1994 and interim relief granted was continued till the disposal of the petition.

6. Learned A.G.P. Mr. Hasit Dave has further submitted that in view of the clear-cut provisions contained in the Act and in view of the formation of the Tribunal, the sole Arbitrator has no jurisdiction to proceed with the arbitration proceedings and hence, the order passed by the learned 2nd Joint Civil Judge (S.D.), Ahmedabad (Rural) is required to be quashed and set aside and the proceedings be transferred to the Tribunal.

7. This petition was opposed by the respondent No.1 i.e. sole Arbitrator and affidavit-in-reply was filed. It was stated in the said affidavit that he has conducted the arbitration matter keeping in view the principle of natural justice, while discharging the duty of conducting arbitration proceedings with a view to resolve the disputes. In any case, if the matter is ordered to be transferred to the Tribunal, the respondent No.1 is entitled to remuneration for the arbitration proceedings work done by him. The respondent No.2 has already deposited a sum of Rs. 5,000/- with the sole Arbitrator but petitioner i.e. State has not deposited such amount.

8. On behalf of respondent No.2, learned advocate Mr. R.R. Shah has filed his appearance. The stand of the respondent No.2 is that sole Arbitrator was appointed

as per the order passed by the learned 2nd Joint Civil Judge (S.D.), Ahmedabad (Rural) and hence, unless and until the order regarding transfer is passed by the said Court, the Arbitrator should be allowed to complete the arbitration proceedings.

9. After having heard learned A.G.P. appearing for the petitioner and after having gone through the documents and papers on record, the Court is of the view that in view of the establishment of the Tribunal, namely, Gujarat Public Works Contracts Disputes Arbitration Tribunal to exercise jurisdiction, power and authority conferred on it by Notification dated 10.12.1993 with effect from 01.01.1994, the present dispute is required to be decided by the Tribunal and the sole Arbitrator appointed pursuant to the order passed by the learned 2nd Joint Civil Judge (S.D.), Ahmedabad (Rural) is contrary to the expressed provisions contained in the said Act and even otherwise as per the provisions contained in Section 21 of the Act, all disputes which are pending on that day are required to be transferred to the Tribunal. In the above view of the matter, the sole Arbitrator is not authorised or empowered to continue with the said arbitration proceedings and the proceedings pending before him are required to be transferred to the Tribunal. Accordingly, the order passed by the learned 2nd Joint Civil Judge (S.D.), Ahmedabad (Rural) referring the matter to the sole Arbitrator for redressal of the dispute is quashed and set aside to the aforesaid extent and the said dispute is now ordered to be transferred to the Tribunal and the Tribunal is hereby directed to proceed with the said dispute.

10. In the above view of the matter, the prayer made in the present petition is hereby granted. Petition is allowed. Rule is made absolute to the above extent without any order as to costs.

[K.A. PUJ, J.]

#Savariya#

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